

## § 62.32

## 22 CFR Ch. I (4–1–12 Edition)

Security's Student and Exchange Visitor Information System (SEVIS). Supporting documentation must be submitted to the Department on the sponsor's organizational letterhead and contain the following information:

(1) Au pair's name, SEVIS identification number, date of birth, the length of the extension period being requested;

(2) Verification that the au pair completed the educational requirements of the initial program; and

(3) Payment of the required non-refundable fee (see 22 CFR 62.90) via Pay.gov.

(p) *Repeat participation.* A foreign national who enters the United States as an au pair Exchange Visitor Program participant and who has successfully completed his or her program is eligible to participate again as an au pair participant, provided that he or she has resided outside the United States for at least two years following completion of his or her initial au pair program.

[60 FR 8552, Feb. 15, 1995, as amended at 62 FR 34633, June 27, 1997; 64 FR 53930, Oct. 5, 1999. Redesignated at 64 FR 54539, Oct. 7, 1999; 66 FR 43087, Aug. 17, 2001; 71 FR 33238, June 8, 2006; 73 FR 34862, June 19, 2008]

### § 62.32 Summer work travel.

(a) *Introduction.* These regulations govern program participation in Summer Work Travel programs conducted by Department of State-designated sponsors pursuant to the authority granted the Department of State under Public Law 105–277.

(b) *Purpose.* The purpose of this program is to provide bona fide foreign students who are enrolled full-time and pursuing studies at accredited post-secondary academic institutions located outside the United States with the opportunity to work and travel in the United States for the shorter of four months or the length of the long break between academic years at the schools they attend (*i.e.*, the summer break).

(c) *Duration of participation.* Summer work travel participants are authorized to participate in the Exchange Visitor Program for up to four months during their official summer breaks. Extensions of program participation are not permitted.

(d) *Participant screening and selection.* In addition to satisfying the requirements set forth at § 62.10(a), sponsors are solely responsible for adequately screening and making the final selection of their program participants and at a minimum must:

(1) Conduct and document interviews with potential participants either in-person or by video-conference;

(2) Ensure that selected applicants have English language skills sufficient to successfully function on a day-to-day basis in their work environments. Sponsors must verify each participant's English language proficiency either through a recognized language test administered by an academic institution or English language school or through the required documented interview; and

(3) Confirm that at the time of application, applicants (including final year students) are enrolled full-time and pursuing studies at accredited post-secondary academic institutions located outside of the United States and have successfully completed at least one semester, or equivalent, of post-secondary academic study.

(e) *Participant orientation.* In addition to satisfying the requirements set forth at § 62.10(b) and (c), sponsors must provide program participants, prior to participants' departures from their home countries, the following information and/or documentation:

(1) A copy of the Department of State's Summer Work Travel Participant Letter;

(2) A copy of the Department of State's Summer Work Travel Program Brochure;

(3) The Department of State's toll-free help line telephone number;

(4) The sponsor's 24/7 immediate contact telephone number;

(5) Information advising participants of their obligation to notify their sponsors when they arrive in the United States and to provide information, within 10 days, of any change in jobs or residences; and

(6) Information concerning any contractual obligations related to participants' acceptance of paid employment in the United States, if employment has been pre-arranged.

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(f) *Participant placement.* Sponsors and foreign entities (*i.e.*, overseas agents or partners acting on their behalf) may not pay or otherwise provide any incentive to host employers to accept program participants for job placements. Sponsors must confirm the placements of all Summer Work Travel participants before the participants may start work, at a minimum, by verifying the terms and conditions of such employment and vetting their identified host employers as set forth at § 62.32(1).

(1) Sponsors of participants who are nationals of non-Visa Waiver Program countries must:

(i) Ensure that all such participants enter the United States with job placements secured in advance by the sponsors (direct-placement) or by the participants (self-placement);

(ii) Fully vet and confirm such placements in advance of placement by, at a minimum, verifying the terms and conditions of such employment and fully vetting their identified host employers as set forth at § 62.32(1); and

(iii) Enter the participants' host employers, sites of activities, and job titles in SEVIS prior to issuing their Forms DS-2019.

(2) Sponsors of participants who are nationals of Visa Waiver Program countries must:

(i) Ensure that participants who enter the United States without job placements secured in advance are nationals of Visa Waiver Program countries;

(ii) Ensure that such participants receive pre-departure information that explains how to seek employment and secure lodging in the United States;

(iii) Maintain and provide such participants with a roster of bona fide job listings equal to or greater than the number of participants who entered the United States without pre-arranged and confirmed job placements;

(iv) Ensure that such participants have sufficient financial resources to support themselves during their search for employment;

(v) Undertake reasonable efforts to assist any such participant who has not found suitable employment within two weeks of commencing his or her job search; and

(vi) Instruct participants of their obligation to notify their sponsors when they obtain job offers.

(g) *Participant compensation.* Sponsors must inform program participants of Federal Minimum Wage requirements and ensure that at a minimum participants are compensated at the prevailing local wage, which must meet the higher of either the applicable state or the Federal minimum wage requirement, including payment for overtime in accordance with state-specific employment laws.

(h) *Monitoring.* Sponsors must:

(1) Maintain, at a minimum, a monthly schedule of personal contact with program participants. Such contact may be in-person, by telephone, or via electronic mail and must be properly documented. Sponsors must ensure that issues affecting the participants' health, safety, and welfare identified through such contacts are promptly and appropriately addressed; and

(2) Ensure appropriate assistance is provided to participants on an as-needed basis and that sponsors are available to participants (and host employers) to assist as facilitators, counselors, and information resources.

(i) *Internal controls.* Sponsors must utilize organization-specific standard operating procedures for training and supervising all organization employees. In addition, sponsors must establish internal controls to ensure that host employers and/or foreign entities comply with the terms of agreements with such third parties involved in the administration of the sponsors' exchange visitor programs, *i.e.*, affect the core programmatic functions.

(j) *Sponsors' use of third parties.* (1) If sponsors utilize foreign entities to assist in fulfilling the sponsors' core programmatic functions that may be conducted outside the United States (*i.e.*, screening, selection, and orientation), they must obtain written and executed agreements with such third parties. For the purpose of this section, U.S. entities operating outside the United States (or its possessions or territories) are considered foreign entities. These agreements must outline the obligations and full relationship between the sponsors and such third parties on all

matters involving the administration of the sponsors' exchange visitor programs;

(2) Written and executed agreements between sponsors and foreign entities acting on their behalf must delineate the respective responsibilities of the sponsors and third parties and include:

(i) Annually updated price lists for Summer Work Travel programs marketed by the foreign entities;

(ii) Representations that such foreign entities will not engage in, permit the use of, or otherwise cooperate or contract with other third parties (including staffing or employment agencies or subcontractors) for the purpose of recruiting or outsourcing any core programmatic functions covered by the agreement (*i.e.*, screening, selection, and orientation); and

(iii) Confirmation that the foreign entities agree not to pay or provide incentives to host employers in the United States to accept program participants for job placements.

(3) Sponsors may utilize only host employers to assist in fulfilling the sponsors' core programmatic functions that are generally conducted within the United States (*i.e.*, orientation and monitoring). Sponsors may not engage third parties other than host employers; and host employers may not engage or subcontract any third parties to assist in fulfilling these functions.

(k) *Screening and vetting of foreign entities.* Sponsors must undertake appropriate due diligence in the review of potential overseas agents or partners who assist in fulfilling the sponsors' core programmatic functions that may be conducted outside the United States (*i.e.*, screening, selection, and orientation) and must, at a minimum, review the following documentation for each potential overseas agent or partner:

(1) Proof of business licensing and/or registration to enable it to conduct business in the venue(s) where it operates;

(2) Disclosure of any previous bankruptcy and of any pending legal actions;

(3) Written references from three current business associates or partner organizations;

(4) Summary of previous experience conducting J-1 Exchange Visitor Program activities;

(5) Criminal background check reports (including original and English translation) for all owners and officers of the organization; and

(6) A copy of the sponsor-approved advertising materials the overseas agent or partner intends to use to market the sponsor's program (including original and English translation).

(l) *Vetting host employers.* (1) Sponsors must adequately vet all potential host employers of Summer Work Travel program participants to confirm that the job offers are viable and at a minimum sponsors must:

(i) Make direct contact in person or by telephone with host employers to verify the business owners'/managers' names, telephone numbers, email addresses, street addresses, and professional activities;

(ii) Utilize publicly available information (*i.e.*, Web sites of Secretaries of States, advertisements, brochures, Web sites, and/or feedback from prior participants) to confirm that all job offers have been made by viable business entities;

(iii) Obtain and verify the host employers' Employer Identification Numbers used for tax purposes; and

(iv) Verify the Worker's Compensation Insurance Policy or equivalent in each state where a participant will be placed or, if applicable, evidence of that state's exemption from requirement of such coverage.

(2) [Reserved]

(m) *Host employer obligations.* Sponsors must ensure that employers of Summer Work Travel program participants:

(1) Provide participants the number of hours of paid employment per week as identified on the job offer and agreed to when the sponsors vetted the jobs;

(2) Pay those participants eligible for overtime worked in accordance with applicable state or federal law;

(3) Notify sponsors promptly when participants arrive at the work sites to begin their programs; when there are any changes or deviations in the job placements during the participants' programs; when participants are not meeting the requirements of their job

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placements; or when participants leave their position ahead of their planned departure; and

(4) Contact sponsors immediately in the event of any emergency involving participants or any situation that impacts the welfare of participants.

(n) *Reporting requirements.* Sponsors must electronically submit the following reports utilizing Department-provided templates:

(1) A Placement Report, on January 31 and July 31 of each year, identifying all Summer Work Travel exchange visitor participants who began an exchange program during the preceding six-month period. The report must include the exchange visitors' names, SEVIS Identification Numbers (or other Department-mandated participant identification numbers), countries of citizenship or legal permanent residence, names of employers, the length of time it took non-pre-placed participants to secure job placements, and other information the Department may deem essential. For participants who change jobs or have multiple jobs during their programs, the report must include all such placements; and

(2) Sponsors are required to maintain current listings of all foreign agents or partners on the Foreign Entity Report by promptly informing the Department of any additions, deletions, or changes to overseas partner information by submitting new versions of the report that reflect all current information. The report must include the names, addresses, and contact information (*i.e.*, telephone numbers and email addresses) of all foreign entities that assist the sponsors in fulfilling the provision of core program services, and other information the Department may deem essential. Sponsors may utilize only vetted foreign entities identified in the report to assist in fulfilling the sponsors' core programmatic functions outside the United States.

(o) *Program exclusions.* U.S. sponsors must not place participants:

(1) In any position in the adult entertainment industry;

(2) In sales positions that require participants to purchase inventory that they must sell in order to support themselves;

(3) In domestic help positions in private homes (*e.g.*, child care, elder care, gardener, chauffeur);

(4) As pedicab or rolling chair drivers or operators;

(5) As operators of vehicles or vessels that carry passengers for hire and/or for which commercial drivers licenses are required;

(6) In any position related to clinical care that involves patient contact; or

(7) In any position that could bring notoriety or disrepute to the Exchange Visitor Program.

[76 FR 23183, Apr. 26, 2011]

### Subpart C—Status of Exchange Visitors

#### § 62.40 Termination of program participation.

(a) A sponsor shall terminate an exchange visitor's participation in its program when the exchange visitor:

(1) Fails to pursue the activities for which he or she was admitted to the United States;

(2) Is unable to continue, unless otherwise exempted pursuant to these regulations;

(3) Violates the Exchange Visitor Program regulations and/or the sponsor's rules governing the program, if, in the sponsor's opinion, termination is warranted;

(4) Willfully fails to maintain the insurance coverage required under § 62.14 of these regulations; or

(b) An exchange visitor's participation in the Exchange Visitor Program is subject to termination when he or she engages in unauthorized employment. Upon establishing such violation, the Department of State shall terminate the exchange visitor's participation in the Exchange Visitor Program.

#### § 62.41 Change of category.

(a) The Department of State may, in its discretion, permit an exchange visitor to change his or her category of exchange participation. Any change in category must be clearly consistent with and closely related to the participant's original exchange objective and necessary due to unusual or exceptional circumstances.